

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 49 OF 2001.

Anil M.P., r/o Muruthmoptil,
Elerritheiptu, Nileshtar via
Kasargod Dist., Kerala.

... Appellant.

Versus

State of Goa as represented
by Officer-in-Charge,
Calangute Police Station,
Calangute.

... Respondent.

Mrs. C. Colaco, Advocate for the Appellant.

Mr. S.N. Sardesai, Public Prosecutor for the
Respondent.

Coram: P.V. HARDAS, J.

Date: 20th March 2003.

ORAL JUDGMENT.

The appellant/original accused no. 1, being aggrieved by the conviction for an offence punishable under Section 489-B of the Indian Penal Code and sentence of rigorous imprisonment for one year, passed by the Additional Sessions Judge, Panaji, by Judgment, dated 27th August 2001, in Sessions Case No. 30 of 2000, has filed the present appeal challenging the aforesaid conviction and sentence. The original accused no. 2, who was similarly convicted and sentenced as the appellant, has chosen not to file an appeal challenging his conviction and sentence as the accused has apparently undergone the term of imprisonment and was directed to be set at liberty by the learned trial Court. Thus, the appeal is confined to the

conviction and sentence as passed against the appellant/original accused no. 1.

2. The facts as are necessary for the decision of the appeal are set out hereunder:-

P.W.7 Gundu Naik was attached to the Calangute Police Station as P.S.I. in January 2000. On 18th January 2000, he recorded the complaint of P.W.5 Sandeep Korgaonkar, at Exhibit P.W.5/A, and on the basis of the said complaint, registered offences vide Crime No. 11/2000, under Sections 489-B, 420 read with 34 of the Indian Penal Code. P.W.7 P.S.I. Naik attached two currency notes produced by P.W.5 Korgaonkar, vide attachment panchanama Exhibit P.W.1/A, in the presence of P.W.1 John Anthony D'Souza and one Lazaro Fernandes. The attached currency notes bore the same number, that is, 9BN 238649. The said two currency notes are M.O.1. On 19th January 2000, at about 3.30 hours, the appellant and the original accused no. 2 came to be arrested vide arrest panchanama, at Exhibit P.W.1/B, in the presence of P.W.1 John and one Jayeshwar son of Ganesh Simepuruskar. On the personal search of the appellant/accused, one currency note bearing No. 9 FE 759090 of the denomination of Rs. 500/- was found. The same was attached and is M.O.2. On 19th January 2000, P.W.3 Connie D'Souza alongwith P.W.6 Rosy Pinheiro

produced two currency notes of the denomination of Rs. 500/- each bearing Nos. 9BN 238649 and 9FE 759090. Both the currency notes came to be attached, vide attachment panchanama, at Exhibit P.W.4/A, in the presence of P.W.4 Shridhar Shetty and one Pravin Verekar. P.W.7 P.S.I. Naik had sent the sealed currency notes for expert opinion to the General Manager, Bank Note Press, Dewas, Madhya Pradesh, through the Office of Superintendent of Police, C.I.D.. The opinion of the General Manager, Bank Note Press, Dewas, Madhya Pradesh, in respect of the five currency notes is that all the notes are counterfeit notes. After completion of the investigation, a charge-sheet against the present appellant and the accused no. 2 came to be filed.

3. After committing the case to the Court of Sessions by the learned Judicial Magistrate, First Class, Mapusa, the learned Sessions Judge, Panaji, vide Exhibit 8, framed a charge against the appellant and the other accused for offences punishable under Section 489-B read with Section 34 and Section 420 of the Indian Penal Code. Both the accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 7 witnesses. The learned trial Court, after appreciation of the evidence, came to the conclusion that the offence as against the appellant and

the other accused under Section 489-B of the Indian Penal Code was proved and, accordingly, convicted and sentenced them. In respect of the charge under Section 420 of the Indian Penal Code, the learned trial Court acquitted the accused.

4. P.W.1 John deposed about the attachment of the two currency notes tendered by P.W.5 Korgaonkar, at Exhibit P.W.1/A. He also deposed about the recovery of one currency note from the possession of the appellant/accused, which was attached, vide arrest panchanama, at Exhibit P.W.1/B. In the cross-examination on behalf of the accused he has admitted that no signature of his was obtained on the notes which were attached. He has also stated that it was the police who had put the seal and he does not know what was written on the seal. He has denied as false that the notes were not put in an envelope and sealed. Similarly he has denied the suggestion that one currency note was not found in the back pocket of the appellant/accused. He has also denied the suggestion that he has signed the panchanama in order to oblige the police.

5. P.W.4 Shetty is a panch witness in respect of the attachment of two currency notes of Rs. 500/- each said to have been produced by P.W.3 Connie. The said

currency notes were attached vide Exhibit P.W.4/A. In the cross-examination on behalf of the accused, he has admitted that the police had not obtained his signature on the currency notes. He has also admitted that he does not know what was written on the seal. He has denied the suggestion that the two currency notes, which he has identified as M.O.3, were not the same notes which were attached by the police. He has admitted that the currency notes were in the hands of the Police Inspector when he first saw them at the police station. He has admitted that he knew P.W.2 Benedict since last 15 years.

6. P.W.3 Connie is an employee in the shop owned by P.W.2 Benedict. P.W.3 Connie states that she is working at the Chance Novelty Shop. On 18th January 2000, at about 4.00 p.m., the appellant/accused came to the shop and purchased one toy gun and a toothbrush. The total cost of the articles purchased by the appellant/accused was Rs. 120/-. The appellant/accused tendered a currency note of Rs. 500/- and she returned Rs. 380/- to him. She further states that when accused no. 1 gave the currency note, P.W.2 Benedict was present in the shop. After about 5 to 10 minutes of the accused no. 1 leaving the shop, accused no. 2 entered the shop and asked for a toothpaste, toothbrush and one soap. The cost of the articles purchased by accused no.

2 was Rs. 50/-. The accused no. 2 tendered a note of Rs. 500/- and she returned Rs. 450/- to the accused. Thereafter, after about 15 to 20 minutes P.W.6 Rosy, wife of P.W.2 Benedict, came to the shop and counted the cash and at that time noticed that two currency notes of Rs. 500/- each were 'fake'. P.W.3 Connie disclosed to P.W.6 Rosy that two persons had come to the shop and each had tendered a currency note of Rs. 500/-. She had also informed P.W.2 Benedict that one person had a mark below his ear. All of them went in search of the accused and, thereafter, P.W.2 Benedict went to the tourist police. She has also stated that apart from the two fake currency notes of Rs. 500/- each, which she had received on that day, she had not received any other currency note of Rs. 500/-. She has identified the two currency notes of Rs. 500/- each. In the cross-examination P.W.3 Connie has admitted that no receipt for the purchase of the articles was issued. She has further stated that the police recorded her statement on the next day. She has also admitted that the police had taken her to the police station for identification of the appellant/accused. She has also admitted that the police had shown her the two notes of Rs. 500/- each, but the police had not obtained her signature on either of the notes. She has denied the suggestion that M.O.3 are not the same notes which were tendered by the accused. In the cross-examination on

behalf of accused no. 2, she has stated that there were only two notes of Rs. 500/- each and has denied the suggestion that there were more notes of Rs. 500/- in the cash drawer. She has also admitted that the two currency notes were with P.W.2 and she does not know when P.W.2 Benedict gave it to the police. She has admitted that she has recognized the said two notes on the basis of their numbers.

7. P.W.2 Benedict states that he runs a shop named Chand Novelty. He further states that P.W.3 Connie was working as a sales person in the shop. He states that on 18th January 2000, the appellant/accused had come to the shop and had asked for a toy gun. He has identified the appellant/accused as the said person on the basis of a mark below the right ear. He states that thereafter he went home and came back to the shop with his wife P.W.6 Rosy. His wife P.W.6 Rosy stated, on checking the cash, that two currency notes of Rs. 500/- each appeared to be forged. He, thereafter, asked P.W.3 Connie as to who had tendered the currency notes and P.W.3 Connie replied that one was given by the customer to whom P.W.2 Benedict had given the toy gun and the other was given by the customer who had come soon after the first customer left. He states that thereafter he went in search of the accused and later went to the police station and handed over the two

currency notes of Rs. 500/- each on the next day. In the cross-examination he has admitted that when he had handed over the two notes to the police, the police had not obtained his signature. He has denied the suggestion that M.O.3 was not handed over by the appellant/accused. In the cross-examination he has admitted that he has identified the accused in the police station. He has also admitted that his statement was recorded on 2nd February 2000.

8. P.W.6 Rosy states that P.W.3 Connie is working in the shop named as Chand Novelty. On 18th January 2000, at about 4.00 p.m., she had returned to the shop alongwith her husband and while counting the cash had noticed two forged currency notes of Rs. 500/- each and they appeared like xerox copies. She noticed that the colour of those notes were different from the usual notes and the notes appeared to be xeroxed and there was no security line. She inquired from P.W.3 Connie as to who had given the notes and P.W.3 Connie had disclosed that two persons had given the notes. She states that P.W.3 Connie had stated that one person had a mark below his ear. In the cross-examination she has denied that she had not noticed that the two currency notes were forged when counting the cash. She has also denied that P.W.3 Connie had not told her that one person who had a mark below the right ear had tendered one currency note.

9. On the basis of this evidence Mrs. Colaco, the learned counsel appearing for the appellant/accused and who has very ably argued the appeal on behalf of the accused, has submitted that there is tremendous discrepancies in respect of the attachment of the currency notes. According to the learned counsel for the appellant/accused, the attachment panchanama, Exhibit P.W.4/A, was executed on 19th January 2000, at about 5.00 p.m.. According to P.W.7 P.S.I. Naik, the currency notes had been tendered by P.W.3 Connie, whereas, according to P.W.3 Connie, she had not produced the notes before the police and, in fact, according to P.W.2 Benedict, it is he, who had handed over the two currency notes to the police on the morning of 19th January 2000. Thus, according to the learned counsel for the appellant/accused, the prosecution has not been able to establish that the currency notes which are alleged to have been handed over by the appellant/accused, are the same notes which had been seized.

10. The evidence of P.W.4 Shetty is very clear inasmuch as he does not say that the currency notes M.O.3 were handed over by P.W.3 Connie. Even the attachment panchanama, at Exhibit P.W.4/A, does not state that the currency notes were handed over by P.W.3 Connie. According to P.W.2 Benedict, he had handed over

the currency notes to the police on 19th January 2000. Apparently it seems that after the currency notes had been handed over by P.W.2 Benedict to the police, there was slight delay in seizure of the currency notes by the police. According to me, that slight delay in the seizure of the currency notes does not reflect upon the genuineness of the prosecution case. None of the witnesses, specially P.W.2 Benedict or P.W.3 Connie, have any axe to grind against the accused. Nor does it appear to be an attempt on the part of P.W.7 P.S.I. Naik to show a false attachment. At any rate, that slight delay would not necessarily lead to an inference that the attachment of the currency notes from the shop of P.W.2 Benedict is a gotup story by the police manufactured purely to inveigle the accused.

11. P.W.5 Korgaonkar owns a restaurant at Calangute. He states that on 18th January 2000, the two accused had come to his restaurant and had ordered for two beers. After consuming the beer, each accused had tendered a currency note of Rs. 500/-. P.W.5 Korgaonkar noticed that the numbers of both the currency notes were identical. He requested the waiter to keep a watch on the accused while he called the police. However, before the arrival of the police, he informed the people at the restaurant about the incident and some of the people assaulted the accused. Thereafter he

filed a complaint, Exhibit P.W.5/A, and had handed over the two currency notes to the police, which were seized vide Exhibit P.W.1/A. In the cross-examination he has admitted that the police reached after about 20 to 25 minutes of his making the phone call. He has admitted that he did not issue any bills to the accused. He has admitted that he has not signed on the said notes. He has denied the suggestion that the notes were not tendered by the accused.

12. The learned counsel appearing on behalf of the appellant/accused has submitted that the two currency notes were attached from P.W.5 Korgaonkar at about 9.45 p.m.. According to her, it is extremely surprising that the police did not attach the notes in the restaurant of P.W.5 Korgaonkar. According to P.W.7 P.S.I. Naik, P.W.5 Korgaonkar had produced the two currency notes of Rs. 500/- each after his complaint was recorded and the same were attached. The failure of the Police Officer to seize the currency notes in the restaurant is not significant at all. The accused were apprehended and beaten by the people in the restaurant itself. The accused were caught virtually red handed and then handed over to the police. However, it is submitted by Mrs. Colaco, the learned counsel for the appellant/accused that the currency note which was found in the pocket of the appellant/accused was detected after considerable

time. According to her, the accused were in custody of the police. However, the arrest panchanama came to be executed at 3.30 a.m. on 19th January 2000 and there is a total non-explanation for the delay in arresting the accused. The reason for delay in the arrest of the accused is not far to seek. P.W.5 Korgaonkar has admitted that the accused were assaulted by the people in the restaurant. The arrest panchanama reflects that, since the accused were having injuries on their body, which were purportedly caused by the irate crowd at the time when both the accused were caught, they were sent for medical examination and treatment. P.W.1 John has also admitted that A1 and A2 were having injuries and, therefore, they were sent for medical checkup. Thus, the delay in arresting the accused and the attachment of the currency notes from the appellant/accused, according to me, is satisfactorily explained. The delay, therefore, does not whittle down the attachment of the currency notes from the appellant/accused.

13. The report of the General Manager, Bank Note Press, Dewas, clearly establishes that all the five currency notes which were sent to him were counterfeit currency notes. The report states that the currency notes referred for examination had been received in a sealed condition. In his Statement under Section 313 of the Code of Criminal Procedure, the accused has not

challenged the report of the General Manager, Bank Note Press, Dewas, which is at Exhibit P.W.7/A. No foundation has been laid in the cross-examination to infer that the currency notes which were seized by the police were not the same which were examined by the General Manager, Bank Note Press, Dewas, Madhya Pradesh. That apart, in the Statement under Section 313 of the Code of Criminal Procedure the accused has taken up a defence of complete denial. The appellant/accused has pleaded ignorance about the evidence of P.W.2 Benedict and P.W.3 Connie. The appellant/accused does not claim to be not in bonafide possession of the currency notes and being unaware that the currency notes were counterfeit. His defence is of total denial. According to me, the prosecution has been able to establish beyond reasonable doubt that the appellant/accused had tendered one currency note to P.W.3 Connie when he had gone to the shop, had tendered one currency note to P.W.5 Korgaonkar and one currency note was found in his pocket. The prosecution has also been able to establish on the basis of the opinion of the General Manager, Bank Note Press, that the currency notes, in the absence of any plausible explanation by the accused, were counterfeit notes. According to me, the prosecution has proved the offence under Section 489-B of the Indian Penal Code. The currency notes, according to P.W.6 Rosy, appeared to be xerox copies of an original

currency note. P.W.6 Rosy, on a mere cursory examination, immediately noticed that the currency notes were counterfeit. The appearance of the currency notes was enough to lead anyone to suspect that the currency notes were counterfeit. The conduct of the appellant/accused in coming to the shop of P.W.2 Benedict, purchasing articles worth Rs. 120/-, tendering a currency note of Rs. 500/- and, thereafter going to the restaurant of P.W.5 Korgaonkar, consuming one beer and tendering a note of Rs. 500/- are circumstances indicative of the fact that the appellant/accused knew the currency notes to be counterfeit and was trying to palm them off as genuine. The currency notes by their very appearance were enough to arouse suspicion by anyone that the currency notes were counterfeit. In the background, therefore, the submission of the learned counsel for the appellant, that the appellant was not put a question in his Statement under Section 313 of the Code of Criminal Procedure, that he knew the currency notes to be counterfeit pales into insignificance.

14. After giving my anxious consideration to the evidence on record and to the submissions advanced by the learned counsel for the appellant, according to me, the learned trial Court has rightly appreciated the evidence and has rightly come to the conclusion

regarding the guilt of the appellant/accused. There is no perversity in the reasonings of the learned trial Court warranting any interference in the present appeal. The present appeal is, thus, devoid of any substance and deserves to be dismissed.

15. Criminal Appeal is, accordingly, dismissed. The appellant is on bail. His bail bond stands cancelled. The appellant to surrender within 8 weeks from today.

(P.V. HARDAS)
JUDGE.

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